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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34473]

CSX Transportation, Inc., Norfolk Southern Railway Company, and Consolidated Rail Corporation—Modified Rail Certificate

On February 18, 2004, CSX Transportation, Inc. (CSX), Norfolk Southern Railway Company (NS), and Consolidated Rail Corporation (Conrail) (collectively, the parties) filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, subpart C, Modified Certificate of Public Convenience and Necessity, to operate over certain portions of the abandoned track of the former Staten Island Railway Corporation (SIRR) in New York and New Jersey lying generally between the Chemical Coast Secondary Line and points on Staten Island, NY. Based on the parties' representations, the lines to be activated for service include: (1) track between milepost 3.8 at John Street east of Arlington Yard, Richmond County, NY, and milepost 6.9, via the Chemical Coast Secondary Line, at or near the connection between the Chemical Coast Connector and the Chemical Coast Secondary Line in Union County, NJ, a distance of 3.1 miles;¹ (2) track between milepost 0.0 at or near

¹ On January 21, 2004, the Board served a decision in Port Authority of New York and New Jersey—Petition for Declaratory Order, STB Finance Docket No. 34428, finding that the construction by the Port Authority of New York and New Jersey (Port Authority) of the

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Port Ivory, Richmond County, NY, and milepost 0.94 at the end of the line near Howland Hook, Richmond County, NY, a distance of 0.94 miles; and (3) the “Travis Branch” between milepost 0.0 at Arlington Yard Station and milepost 3.65 in Richmond County, NY, a distance of 3.65 miles.² The lines to be used in providing service also include the new industrial lead and switching track to be constructed off of the Travis Branch³ into the New York City Department of Sanitation facility being constructed at the Fresh Kills landfill site on Staten Island (Fresh Kills facility).

The provision of freight rail service in this proceeding is a component of the Staten

¹(...continued)

connector between the SIRR trackage and the Chemical Coast Secondary Line, and operations thereover, do not require Board approval. The parties will reach this segment via the connector. No trains will operate on the abandoned SIRR lines until 2005, when it is anticipated that construction of the connector will be complete.

² The SIRR was abandoned in two parts. Those segments subject to this proceeding that were approved for abandonment in Staten Island Railway Corporation–Abandonment, Docket No. AB-263 (Sub-No. 3) (ICC served Dec. 5, 1991) include: (1) track between milepost 3.8 at John Street and milepost 12.09 at or near Cranford Junction, NJ; and (2) track between milepost 0.0 at or near Port Ivory and milepost 0.94 near Howland Hook. The Travis Branch was abandoned pursuant to authority granted in Staten Island Ry. Corp.–Aband. Exempt.–In Richmond County, NY, Docket No. AB-263 (Sub-No. 2X) (ICC served July 3, 1990). The lines were subsequently acquired by the States of New York and New Jersey. No freight rail traffic has moved over these lines since these abandonments became effective. Segments of the former SIRR that are not the subject of this proceeding are those that lie west of the Chemical Coast Secondary Line.

³ On October 29, 2003, the New York City Economic Development Corporation (NYCEDC) filed a petition in The New York City Economic Development Corporation–Petition for Declaratory Order, STB Finance Docket No. 34429, for a declaratory order seeking certain determinations as to the Travis Branch. A decision in that case is pending.

Island Railroad Revitalization Project, a joint effort between the Port Authority and NYCEDC.

The parties state that, at this time, they are negotiating an operating agreement with NYCEDC that will govern how such freight rail service will occur.⁴

The parties anticipate that the traffic flows over the subject lines will primarily consist of the following: (1) block movements of intermodal traffic, assembled by the Howland Hook Marine Terminal/Port Ivory operator, to and from Arlington Yard (Howland Hook Traffic); (2) movements of containerized municipal solid waste, assembled by the Fresh Kills facility operator, to and from the Fresh Kills facility (Fresh Kills Traffic); and (3) movements of mixed merchandise (including aggregates and paper products) to and from two potential customers located on the Travis Branch (Travis Branch Traffic).

The parties indicate that, in general, Conrail will move the Howland Hook Traffic and the Travis Branch Traffic to and from Staten Island to the Conrail Shared Assets Areas for line haul movement via NS and CSX. Conrail will switch the Travis Branch Traffic, if and when it develops, directly from the customers' facilities. NS and/or CSX will likely serve the Fresh

⁴ Following the negotiation of this operating agreement, the parties state that they will submit a petition seeking: (1) an exemption pursuant to 49 U.S.C. 10502 from the approval requirements of 49 U.S.C. 11323 to permit the parties to implement the operations described in the modified certificate in a manner described in the agreement; (2) a prior determination that the authority granted by the Board pursuant to the petition will automatically expire upon the termination of the modified certificate, and that Conrail will not be able to unilaterally terminate the modified certificate; and (3) a determination that the grant of authority under 49 U.S.C. 11323 will not give Conrail any ratemaking, interchange, or other common carrier authority that it currently lacks. The parties indicate that a copy of the operating agreement will accompany the petition.

Kills Traffic directly. The parties state that Conrail will dispatch the subject lines, while NYCEDC will retain responsibility for maintaining the subject lines and operating the Arthur Kill Lift Bridge.

The rail lines qualify for a modified certificate of public convenience and necessity. See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions, Finance Docket No. 28990F (ICC served July 16, 1981).

The parties indicate that the only precondition to a shipper's receipt of service is the execution of an agreement with CSX or NS that specifies the rates and other terms and conditions of the service such carriers will provide. They also indicate that: (1) there are no subsidizers, and (2) existing insurance covering the parties' current operations will be expanded to cover operations over the subject lines; no additional insurance will be acquired.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street N.W., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 50 F Street N.W., Suite 7020, Washington, DC 20001.

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Decided: March 12, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary